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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,026	12/05/2003	Steven F. Bolling	FORFLOW.1CP6C1	8833
20995	7590	02/08/2006		
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER LAYNO, CARL HERNANDZ	
			ART UNIT 3766	PAPER NUMBER

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment, which was received by the Office on December 5, 2005.
2. Claims 1-6, 8, 11, 12, 14, 26, and 27 are canceled. Claims 33-66 have been added. Claims 7, 9, 10, 13, 15-25, and 28-66 are active.

Claim Objections

3. Claim 43 is objected to because of the following informalities: -Claim 43 is objected to under 37 CFR 1.75(b) since it does not "differ substantially" from the subject matter already recited in claim 34. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 43 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, there is no antecedent basis in the claim language for the terms "the first peripheral vessel" and "the second vessel". To overcome this rejection, the Examiner recommends changing the claim dependency to depend from claim 29 rather than from claim 31.

Claim Rejections - 35 USC § 102

6. Upon further reconsideration of applicant's claim cancellations and claim amendments, the Examiner is withdrawing the 35 U.S.C 102(b) rejections based upon the articles of Vekerke et al and Ide et al, which were made against claims 11, 12, 14, 26, 27, and 32 in the last Office action.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 15 and 31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,387,037. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim the features of blood pumps capable of pumping blood at subcardiac flow rates and a "conduit", specified in claim 2 of the '037 patent as a multi-lumen catheter, for permitting blood

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flow in reverse directions between two different blood vessels through subsidiary conduits.

Although applicant's claim 31 specifies that the conduit is constructed of a flexible material, the Examiner is taking the position that it would be obvious, if not inherent, for the multi-lumen catheter w/conduits of claim 2 in the '037 patent to be composed of a flexible material, since such a catheter would have to be flexible enough to have been guided through blood vessels into its targeted position within the patient's vasculature.

9. Claims 10 and 24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 8, and claims 1 and 7, respectively, of U.S. Patent No. 6,889,082. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons. Claim 1 of the '082 patent recites the same primary features of an extracardiac pump for pumping blood at subcardiac flow rates and a "first conduit" capable of permitting the flow of blood in two directions since it also houses a "second conduit". The distal end of this "second conduit" may reside either in the same blood vessel as the "first conduit" or a different blood vessel. The "first conduit" is fluidly coupled to a blood vessel using a minimally invasive procedure at a single site. The claim does not recite the location of the pump (i.e. whether or not it is inside or outside of the patient's body) or what type of pump it is. Depending claim 8 of the '082 patent specifies that the pump is implantable within the patient's body. Depending claim 7 of the '082 patent specifies that the pump is a rotary pump. To have combined these dependent claims with independent claim 1 of the '082 patent to form new independent claims, as done in independent claims 10 and 24 of this application, would have been an obvious expedient to one of ordinary skill.

Allowable Subject Matter

10. Claims 16, 22, 23, 32-37, and 50-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 7, 9, 13, 17-21, 25, 28-30, 38-42, and 44-49 are allowed.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Jarvik et al (US 5,965,089) patent is cited for its pertinent pump arrangement (Fig.20). Unlike applicant's device, however, one conduit of Jarvik et al is not located within a blood vessel, but rather is located in the patient's left ventricle. It is unclear whether or not the device of Jarvik et al provides pumping of blood at "subcardiac" rates.

The Troutner et al (US 4,464,164) patent describes a dialysis machine whose structure is similar to that of applicant's device in that rotary pumps **20,80** (Fig.3) are used to circulate blood through a single conduit **134**. Unlike applicant's device, the single conduit **134** arrangement of Troutner et al does not provide flow to two different blood vessels or locations in the vasculature.

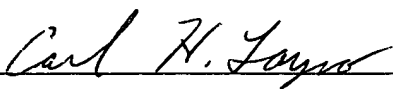
Conclusion

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL LAYNO
PRIMARY EXAMINER

CHL
2/2/2006